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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL MORRIS,

Plaintiff,

No. C 11-3712 PJH

v.

**ORDER GRANTING MOTION
TO DISMISS**

COMCAST OF MARIN and LIBERTY
MUTUAL,

Defendants.

/

Defendants' amended motion to dismiss the complaint came on for hearing before this court on November 9, 2011. Plaintiff Paul Morris ("plaintiff") appeared pro se. Defendants Comcast of Marin ("Comcast") and Liberty Life Assurance Company of Boston (erroneously sued as "Liberty Mutual") ("Liberty Life") (collectively "defendants"), appeared through their counsel, Alexis Kent. Having read the parties' papers and carefully considered both parties' oral arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS defendants' motion to dismiss, for the reasons stated at the hearing, and summarized as follows.

Defendants construe, and plaintiff admits, that plaintiff's underlying state court small claims complaint asserts two causes of action against defendants: common law breach of contract and constructive fraud. See Petition for Removal, Exhibit 1 ("Complaint"); see also Pl. Dismiss Opposition Br. at 2. Plaintiff's claims are generally premised on the allegation that defendants "fraudulently sold [plaintiff] long term disability insurance with no chance of collection." Complaint at p. 2. Defendants seek dismissal of both claims, on grounds that ERISA § 514, 29 U.S.C. § 1144, preempts them.

Defendants are correct. ERISA preempts claims that "relate to" an employee benefit

1 plan as articulated by ERISA § 514(a). See 29 U.S.C. 1144(a)(ERISA § 514(a) expressly
2 preempts "state laws insofar as they . . . relate to any employee benefit plan."); see also
3 Abraham v. Norcal Waste Sys., Inc., 265 F.3d 811, 819 (9th Cir. 2001). Here, the
4 insurance policy underlying plaintiff's claims – which has been submitted by defendants in
5 support of their motion to dismiss and which may properly be considered as a document
6 referenced in plaintiff's complaint – is part of an ERISA employee welfare benefit plan, as
7 maintained by defendant Comcast for the benefit of its employees. See Declaration of
8 Paula J. McGee ISO Mot. Dismiss, ¶¶ 3-4, Ex. A. Because plaintiff's causes of action for
9 breach of contract and constructive fraud – premised on allegations relating to the
10 defendants' provision of long term disability benefits – would substantially affect an ERISA-
11 governed relationship, they therefore "relate to" to an "employment benefit plan" and as
12 such, are preempted under § 514(a).

13 Furthermore, to the extent plaintiff's opposition can further be read to state that the
14 underlying complaint asserts an additional claim for breach of fiduciary duty under the
15 ERISA regulatory scheme, plaintiff has neither pled nor elucidated in his opposition
16 sufficient facts from which to state a legally cognizable ERISA claim.

17 Accordingly, for the foregoing reasons, defendants' motion to dismiss is GRANTED.
18 The dismissal is without prejudice to plaintiff's ability to re-file a complaint properly alleging
19 violation of his rights pursuant to ERISA. As discussed at the hearing, however, if plaintiff
20 seeks to do so, he must first exhaust his administrative remedies. As such, plaintiff is
21 granted a period of ninety days – until February 7, 2012 – in which to exhaust his
22 administrative remedies. Plaintiff shall have twenty-eight days thereafter – until March 6,
23 2012 – in which to file his amended complaint, if any.

24 **IT IS SO ORDERED.**

25 Dated: November 9, 2011



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PHYLLIS J. HAMILTON
27 United States District Judge
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